



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Loren W. Soukup
Erin E. Stagg

Of Counsel
Ellie R. Austin
Robert J. Henry
Patrick C. Wilson
Frank Zotter, Jr.

LEGAL UPDATE

October 7, 2020

To: Superintendents, Member School Districts (K-12)

From: Damara Moore, Senior Associate General Counsel *DM*

**Subject: New Special Education Guidance
Memo No. 60-2020**

On September 30, 2020, the California Department of Education (“CDE”) [released new guidance](#) (“Guidance”) related to the provision of supports and services to students with disabilities during the COVID-19 pandemic. While the Guidance addressed cohorts, distance learning, assessments, drafting emergency conditions offers in IEPs, and the social emotional wellness of students, this brief legal update highlights some of the more informative components of the Guidance.

We have received questions from clients asking if the reduced minimum days this school year allows for a unilateral reduction in specialized academic instruction (“SAI”) minutes in students’ IEPs. For example, if a student’s school day used to be six hours and is now four hours, and a student’s operative IEP included SAI of 1200 minutes a week, could the local education agency (“LEA”) unilaterally interpret the student’s minutes to now be reduced, by operation of the adoption of the new minimum school day, to require only a proportionate number of SAI minutes, i.e. 800 minutes per week of SAI instead of 1200 minutes? It appears that the CDE has taken the position that IEP service minutes, including SAI, must be implemented with fidelity as set forth in the operative IEP. The CDE has this to say on the subject:

Do the requirements for distance learning and instructional minutes in the FY 2020-21 school year impact Specialized Academic Instruction on a student’s IEP?

Specialized Academic Instruction (SAI) in a student’s IEP (including minutes), like all aspects of the IEP, is determined by the IEP team. SAI is an instructional service and individualized based on student need. LEAs are required to implement IEPs.



Therefore, when an LEA reduces its minimum day, they must either implement SAI as written in the IEP, or gain consent to an amendment to that IEP to change those minutes.¹

In addition, the Guidance clarifies that cohort rules for special education students this year during distance learning apply to students who are ages 18-22:

Does the [California Department of Public Health “CDPH”] guidance related to cohorts apply to students age 18-22 participating in post-secondary programs that are provided through the K-12 school setting?

*Yes. LEAs may serve small cohorts of students with disabilities ages 18-22 consistent with the CDPH guidance.*²

The Guidance also addresses the subject of emergency condition offers within the IEP. Recall that Senate Bill 98 added a requirement that IEPs include a description of services during emergency conditions. Emergency conditions are outlined in Education Code section 46392 and include “fire, flood, impassable roads, epidemic, earthquake, the imminence of a major safety hazard as determined by the local law enforcement agency, and a strike involving transportation services to pupils provided by a non-school entity,” among other conditions.

The Guidance addresses, among other questions, when the emergency condition offer may be implemented:

Does an LEA need to wait 10 days before implementing the description of how the IEP will be implemented under emergency conditions IEP?

No. If the LEA has good reason to believe that, due to emergency conditions [], instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days, the LEA may implement the provisions outlined in the description before 10 school days have elapsed.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

© 2020 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client’s own non-commercial purposes.

¹ Note that as of October 1, 2020, these minutes, when provided during distance learning, can now be entered with the service location of “Virtual Platform,” on Special Education Information System “SEIS.” More information about this may be found on the SEIS home page.

² <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/small-groups-child-youth.aspx> and <https://files.covid19.ca.gov/pdf/guidance-schools-cohort-FAQ.pdf>